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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re XAVIER H., a Person Coming Under
the Juvenile Court Law.

B210752
(Los Angeles County
Super. Ct. No. PJ40021)

THE PEOPLE,

Plaintiff and Respondent,

v.

XAVIER H.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County,
Jack Gold, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Remanded,
otherwise affirmed.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Keith H. Borjon
and A. Scott Hayward, Deputy Attorneys General, for Plaintiff and Respondent.

A petition filed under Welfare and Institutions Code section 602, on December 4, 2007, alleged that the minor and appellant Xavier H. committed one count of grand theft of personal property (Pen. Code, § 487, subd. (a)). The allegation arose out of the minor's theft of cigarettes, having a value greater than \$400, from a Los Angeles Police Department "bait car"—a car that is being surveilled by police. On June 6, 2008, minor pleaded no contest to grand theft and the juvenile court ordered him placed home on probation. The court, however, failed to declare whether the grand theft is a misdemeanor or a felony.

Welfare and Institutions Code section 702 states in part that if "the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony." Where such a " 'wobbler' " offense is at issue, the provision requires an "explicit declaration by the juvenile court." (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1204.) Grand theft is a " 'wobbler' " offense. Under Penal Code section 489, subdivision (b), grand theft is punishable by imprisonment in a county jail not exceeding one year or in the state prison. The juvenile court was therefore required to declare the grand theft a misdemeanor or a felony.

The juvenile court did not, however, comply with Welfare and Institutions Code section 702. The court did not check a box at line 30 of the June 6, 2008 minute order to indicate whether the offense was a misdemeanor or a felony. When the minor was entering his plea, the court said: "It says here on October 11th, 2007, you committed the crime of grand theft personal property in violation of [Penal Code section] 487(a), a felony?" But the court was merely reading from the petition. It does not appear that the court was making the "explicit declaration" Welfare and Institutions Code section 702 requires. Because the juvenile court neglected to declare the offense a misdemeanor or a felony, remand is necessary, an outcome with which the Attorney General agrees.

DISPOSITION

The matter is remanded so that the juvenile court can comply with Welfare and Institutions Code section 702. The judgment is otherwise affirmed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.